



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

JAN 1 2 2004

Mr. Donald Boucher  
2709 Ithaca Court  
Plano, Texas 75025

RE: MUR 5398

Dear Mr. Boucher:

On December 19, 2003, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Kathleen Dutt, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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2 **FEDERAL ELECTION COMMISSION**  
3 **999 E Street, N.W.**  
4 **Washington, D.C. 20463**  
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6 **FACTUAL AND LEGAL ANALYSIS**  
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9 **RESPONDENT:** Donald Boucher

MUR: 5398

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12 **I. INTRODUCTION**

13 LifeCare is a corporation whose sole purpose is to act as a holding company for its  
14 subsidiary, LMS.<sup>1</sup> LMS is a limited liability company (LLC) that was established in the state of  
15 Louisiana with LifeCare as its sole member. LifeCare and LMS go beyond having close ties with  
16 one another—they are essentially alter egos of one another. LifeCare and LMS share corporate  
17 offices and each executive officer of LMS holds the same title in LifeCare, although the position  
18 within LifeCare carries no added responsibilities or additional compensation. Further, LifeCare  
19 has no cash flow of its own, and conducts none of its own operations. Donald Boucher was Vice  
20 President for Government Relations during the time period relevant to this matter.

21 Information obtained by the Commission in the course of its supervisory responsibilities  
22 indicates that: (1) former LMS Chief Executive Officer and President, David LeBlanc, had full  
23 discretionary authority to award non-annual bonuses which were not subject to any formal review  
24 process; (2) there is an unusually close correlation between political contributions made by  
25 certain LMS employees, including Mr. Boucher, and bonus and expense payments paid out to  
26 those employees by LMS from 1997 to 2002; (3) Mr. LeBlanc reportedly had an agreement with

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<sup>1</sup> LifeCare was co-founded by David LeBlanc and Ann George in 1992. Mr. LeBlanc served as CEO and President of both LMS and LifeCare during the time period relevant to this matter and Ms. George was an employee of LMS during the relevant time period.

Mr. Boucher, to increase Mr. Boucher's salary in the amount necessary to pay for political contributions made by Mr. Boucher; and (4) Mr. Boucher encouraged at least one LMS executive to make certain political contributions and told the executive that the money would be repaid to him—the executive subsequently made contributions which, according to the executive, were reimbursed by LMS.

## II. FACTUAL AND LEGAL ANALYSIS

The Act provides that officers or directors of any corporation are prohibited from consenting to any contribution or expenditure by the corporation.<sup>2</sup> 2 U.S.C. § 441b(a). The Act's corresponding regulations also prohibit persons from knowingly permitting his or her name to be used to effect that contribution or assisting in making contributions in the name of another. *See* 11 C.F.R. § 110.4(b)(1)(ii)—(iii). As discussed above, there is significant correlation between expense payments, bonuses, and salary adjustments authorized and received by Mr. Boucher from 1997 through 2002, and political contributions made by him. The total amounts of contributions potentially reimbursed to Mr. Boucher was \$65,900.<sup>3</sup>

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<sup>2</sup> All of the facts relevant to these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L 107-155, 116 Stat 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

<sup>3</sup> This total amount includes \$7,750 in contributions made in his wife's name, which were potentially reimbursed to Ms. Boucher through payments to Mr. Boucher from LifeCare.

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3 Finally, LMS Executive Vice President of Operations,  
4 Leroy Thompson, states that Boucher encouraged him to make political contributions and  
5 assured Thompson that "the money would come back to him somehow." In fact, on at least one  
6 occasion, Mr. Thompson made such a contribution and was reimbursed by a personal check from  
7 Mr. Boucher, who received the money from LMS by including that amount on one of his own  
8 expense reports. Based on the foregoing, the Commission finds reason to believe that Donald  
9 Boucher violated 2 U.S.C. §§ 441b(a) and 441f.

10 Further, the Commission finds reason to believe that Mr. Boucher acted knowingly and  
11 willfully. The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C.  
12 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is  
13 violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J.  
14 1986). A knowing and willful violation may be established "by proof that the defendant acted  
15 deliberately and with knowledge that the representation was false." *US v. Hopkins*, 916 F.2d  
16 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the  
17 defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15.

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19 the descriptions given on expense reports and bonus requests  
20 submitted by Mr. LeBlanc and Mr. Boucher, which were allegedly used to reimburse LMS  
21 employees for political contributions, include the following: "bonus for job well done," "bonus  
22 pay," "retro pay increase," "expense advance," and "expenses," among others. Since these

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1 descriptions indicate attempts to disguise the reimbursement of the political contributions, they  
2 may have been deliberately deceptive and can be used to infer knowing and willful behavior by  
3 Mr. Boucher. *See Hopkins*, 916 F.2d. at 214-15. Accordingly, the Commission finds reason to  
4 believe that Mr. Boucher knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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